

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING
EN BANC**

ORIGINAL

76-1087

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Pg 5

**United States Court of Appeals
For the Second Circuit**

Docket Numbers 76-1087,
1088, 1093, 1094

UNITED STATES OF AMERICA,

Appellee,

v.

BENNY ONG, WONG WAH,
TOM HOM and ALBERT YOUNG,

Appellants.

*On Appeal From The United States District
Court For The Southern District Of New York*

PETITION ON BEHALF OF APPELLANT WONG WAH
FOR REHEARING OR IN THE ALTERNATIVE FOR
THE ISSUANCE OF AN ORDER STAYING THE
MANDATE OF THIS COURT AND CONTINUING THE
APPELLANT ON BAIL PENDING APPLICATION FOR
CERTIORARI TO THE SUPREME COURT OF THE
UNITED STATES.

WILLIAM C. HERMAN
*Attorney for Appellant
Wong Wah*
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(212) CA 6-7971



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

-v-

Docket Numbers
76-1087, 1088, 1093, 1094

BENNY ONG, WONG WAH,
TOM HOM and ALBERT YOUNG,

Appellants.
-----x

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

PETITION ON BEHALF OF APPELLANT WONG WAH FOR REHEARING
OR IN THE ALTERNATIVE FOR THE ISSUANCE OF AN ORDER
STAYING THE MANDATE OF THIS COURT AND CONTINUING THE
APPELLANT ON BAIL PENDING APPLICATION FOR CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES.

To The United States Court Of Appeals For The Second Circuit:

WONG WAH, one of the appellants above named, respectfully
petitions this Honorable Court for a rehearing of the appeal in the
above-entitled case and in support of this petition represents to the
Court as follows:

The appellant reserves his argued position as to each of the
points heretofore raised on appeal, but in this petition addresses himself
solely to those aspects of the opinion of this Court decided on
September 14, 1976 wherein the Court may be convinced that its result

is based on the misapprehension of certain matters pertaining to the issues originally raised on appeal.

Therefore, this petition respectfully seeks to convince the Court that it has erred in its determination with respect to the following stated issues:

The curtailment of the cross-examination by counsel for the appellant WONG WAH was of Constitutional dimension and violated the rights of WONG WAH to the effective assistance of counsel and the right to confrontation guaranteed him by the Sixth Amendment and not merely "Harmless Error".

If the instant petition for rehearing is denied, the appellant WONG WAH respectfully petitions this Court for the issuance of an order staying the mandate of this Court and continuing him on bail pending the disposition of a Petition for a Writ of Certiorari to be filed with the Supreme Court of the United States in accordance with the statutes and rules applicable thereto.

As To A Rehearing Of The Limited Aspects Of This Appeal

The curtailing of the cross-examination of the attorney, William C. Herman, for the defendant WONG WAH by the Court below was of Constitutional dimensions and a denial of the defendant's Constitutional right under the Sixth Amendment of the Constitution of the United States of America, both as to the effective assistance of counsel and the right of confrontation.

Appellant Wong Wah has contended that the curtailing of his attorney's cross-examination of the Government's chief witness, Granelli, deprived him of his Constitutional right of confrontation under the Sixth Amendment as well as to the right of the effective assistance of counsel under the same Amendment.

At page 5536 of the Slip Opinion, the Court noted that counsel for Wong Wah responded that he had no further questions at the close of redirect examination of the witness Granelli. It is respectfully submitted that the redirect examination of Granelli did not, in any manner, encompass any of the area into which counsel desired to further cross-examine Granelli, and if Mr. Herman had been so brash as to attempt to introduce cross-examination of anything that had not been covered on redirect examination, immediately after having been "sat down" and curtailed by the Court, it most probably would have been held by the Trial Court to be contemptuous and improper.

Further, much is made in the Slip Opinion that counsel did not

question Government witness Kibble concerning the area he had delineated as part of the subject matter he would have cross-examined Granelli on had he not been abruptly curtailed.

Again, cross-examination of Kibble in respect to his conversation with Wong Wah, allegedly overheard by Granelli, would have been highly improper and non-productive in view of the fact that Kibble did not testify on direct examination to any such conversation had with Wong Wah.

It is respectfully submitted that the refusal of the Court to permit counsel to make or to give an offer of proof at the Side Bar was an abuse of discretion and his subsequent direction to the attorney to take his seat amounted to intimidation and obviously deprived the appellant Wong Wah from the effective assistance of counsel from that point on.

The following finding of the Court

" We find that Wan's argument that he wanted to show coercion in the narcotics context is too remote and speculative in the face of the complete absence of any evidence of coercion in the conversation. Moreover, it is hard to believe that the INS investigator wearing the recorder would have thus inculcated himself in an illegal scheme. " (S.O. 5537)*

is difficult to follow, particularly the second sentence. Since the INS investigator would allegedly be acting in his official capacity in attempting

* Numbers preceded by "S.O. " refer to pages of the Slip Opinion.

to coerce and inveigle Wong Wah in a narcotics transaction, there is no apparent reason to express doubt that he, wearing a recorder, would inculcate himself in a "narcotics scheme". The only illegality of the scheme would be his over-reaching and attempting to coerce appellant Wong Wah, and the record is replete with such efforts on the part of both investigators, Granelli and Kibble.

We respectfully submit that by its decision in respect to Wong Wah, this Court has ignored the rulings contained within Alford v. United States, 282 U.S. 687 (1931).

Conclusion

As To Staying The Issuance Of The Court's Mandate And Continuing
The Appellant On Bail Pending Application For A Writ Of Certiorari
To The Supreme Court.

If this Court should deny the instant Petition for a Rencaring, the appellant Wong Wah intends to present to the United States Supreme Court a Petition for a Writ of Certiorari. It is respectfully prayed that the issuance of the mandate of this Court be stayed and the petitioner continued on bail until the determination of said Petition for a Writ of Certiorari.

Appellant Wong Wah has been continued on bail herein pending appeal in the same amounts and under the same terms and conditions as previously applied.

Appellant is a citizen of the United States and an honorably discharged veteran of the Korean War and has resided within the Southern District of New York for over 20 years. His only prior conviction with the law was a conviction for a misdemeanor in the State Court immediately prior to the commencement of the instant trial and for which he received a suspended sentence. He has always responded to the edicts of the Court and fulfilled his bail obligations.

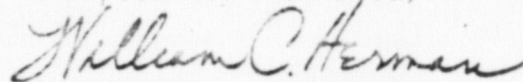
It is respectfully submitted that the questions above discussed as well as those set forth in the original appeal are not frivolous but in fact are questions of great substance and significance which merit a

review by the United States Supreme Court.

No prior application for the relief sought herein has been made.

For the foregoing reasons, appellant herein respectfully requests that a rehearing be granted or that, in the alternative, the issuance of the mandate of this Court be stayed and the appellant Wong Wah continued on bail pending the filing and disposition of his petition for a writ of certiorari to the Supreme Court of the United States.

Respectfully submitted,

A handwritten signature in cursive script, reading "William C. Herman".

WILLIAM C. HERMAN

Attorney for Appellant

Wong Wah

Office & P. O. Address

40 Broadway

New York, New York 10013

(212) CA 6-7971

Dated: September 23, 1976

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

WILLIAM C. HERMAN, being first duly sworn, on
oath certifies and says:

That he is the attorney for the appellant in this cause; that he makes this certificate in compliance with the rules of this court; that in his judgment the within and foregoing petition is well-founded and is not frivolous or interposed for delay.

William C. Herman
WILLIAM C. HERMAN

(Subscribed and sworn to before me this 21th day of September, 1955)

LEONARD H. SALTZ

Notary Public, State of New York
No. 30-8744123
Qualified in Nassau County
Commission Expires March 30, 1978

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X
UNITED STATES OF AMERICA,

-v-

SUGGESTION FOR A
REHEARING EN BANC

WONG WAH,

Docket Number 76-1093

Petitioner.
----- X

The Petitioner, WONG WAH, suggests to this Court that his Petition for a Rehearing in the above-entitled case and filed on even date herewith be heard en banc for the following reasons:

(1) The issues raised by the Petitioner in his Petition for a Rehearing directly confront the issue of violation of the Sixth Amendment rights of appellant WONG WAH to the effective assistance of counsel and the right of confrontation by cross-examination of the Government witness. The importance of this question raised in Petitioner's appeal is of great and general significance.

(2) The decision entered by this Court affirming Petitioner's conviction came almost four months after oral argument and in this Court's Opinion it was acknowledged that Petitioner's argument had force.

WHEREFORE, the Petitioner, WONG WAH, respectfully suggests that he be granted a rehearing of the above appeal en banc.

Yours, etc.,
William C. Herman
WILLIAM C. HERMAN

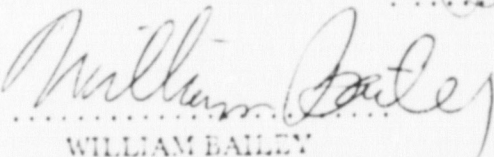
Attorney for Petitioner Wong Wah
Office & P. O. Address
401 Broadway
New York, New York 10013
(212) CA 6-7971

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 28 day of Sept. 19 76 at No. 1, St. Andrews Pl. NYC deponent served the within Petition upon U.S. Atty. So, District of N.Y. the Appellee herein, by delivering ~~XXXX~~ 3 true copies ~~copy~~ thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 28 day of Sept. 1976

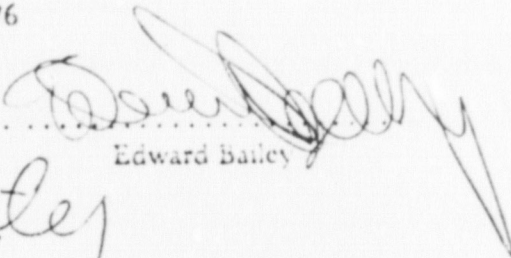

.....
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1978


.....
Edward Bailey